



## Rule Fact Sheet

December 4, 2002  
(Updated May 7, 2003)

### Development of Amendments to Rules Concerning Control of Nitrogen Oxides

#02-54(APCB) / LSA Document #02-54

#### Update since Preliminary Adoption

At the first public hearing on December 4, 2002, U.S. Steel testified that they were evaluating their options to determine if an economic opportunity existed if they moved their boilers from 326 IAC 10-3-1 (the applicability section of the NOx reduction program for specific source categories) to 326 IAC 10-4-9 (the NOx allowance allocations section of the NOx budget trading program). They requested to preserve their option to request a rule change until final adoption.

U.S. Steel submitted a request on February 28, 2003, to amend 326 IAC 10-3-1(a)(2)(D) by deleting all U.S. Steel's affected units and adding the units to the NOx allowance allocation rule section at 326 IAC 10-4-9(d)(3)(J).

The rule proposed for final adoption includes U.S. Steel's boilers in the trading program. Additional rule sections affected by U.S. Steel's move into the trading rule include changes to 326 IAC 10-4-9(a), total number of NOx tons available for allocation; 326 IAC 10-4-9(a)(1)(B) for existing units; 326 IAC 10-4-9(a)(2)(B) for new unit allocation set asides; 326 IAC 10-4-9(a)(3) for energy efficiency and renewable energy allocation set asides; 326 IAC 10-4-9(e)(1)(A)(ii), allocation set asides for large affected new units commencing operation on or after May 1, 2000; 326 IAC 10-4-9(e)(1)(B) energy efficiency and renewable energy allocation set asides for new units commencing operation on or after May 1, 2000; and 326 IAC 10-4-9(h)(1), (2), and (3), the number of banked allowances in the new unit or energy efficiency set asides.

U.S. EPA expressed concern with the proposed flow control date of 2004 at 326 IAC 10-4-14(b). The rule proposed for final adoption provides for a flow control date of 2005. The 2005 flow control date will harmonize Indiana's rule with federal requirements.

The Legislative Services Agency fiscal impact analysis required by IC 4-22-2-28 is included in the May 7, 2003, board packet along with updated information for the addition of U.S. Steel to the trading

#### Overview

To amend 326 IAC 10-3 and 326 IAC 10-4 to respond to comments from certain affected sources, to incorporate changes made by U.S. EPA to the compliance date for the NOx SIP Call for certain affected sources, to make changes requested by the Department of Commerce to the energy efficiency and renewable energy provisions, and to make minor wording changes for clarification.

#### Citations Affected

Amends 326 IAC 10-3-1; 326 IAC 10-4-1, 326 IAC 10-4-2, 326 IAC 10-4-9, 326 IAC 10-4-10, 326 IAC 10-4-13, 326 IAC 10-4-14, and 326 IAC 10-4-15.

#### Affected Persons

Certain electric utility boilers, non-utility boilers and turbines, and stationary internal combustion engines.

## **Reasons for the Rule**

On September 24, 1998, U.S. EPA issued a rule (NOx SIP Call) that required twenty-two (22) states in the eastern United States, including Indiana, to individually reduce their emissions of nitrogen oxides (NOx). The federal rule establishes an overall cap on NOx emissions for Indiana based on significant emission reductions from specific sources. In response to U.S. EPA's NOx SIP Call, the Air Pollution Control Board final adopted rules on June 6, 2001, that became effective on September 16, 2001. The rules were submitted and approved by U.S. EPA as an amendment to the Indiana state implementation plan (SIP) on November 8, 2001.

During the second public hearing, comments were received requesting amendments to the rule being considered for final adoption. In an effort to keep the rule on schedule for submittal to U.S. EPA, the requested changes were put on hold until the rule was promulgated by the state and approved into the SIP by U.S. EPA.

This rulemaking reopens 326 IAC 10-3 and 326 IAC 10-4 to provide an opportunity to amend the newly promulgated rules.

## **Economic Impact of the Rule**

There will be an impact to the two sources affected by these rule changes, Ispat Inland in Lake County and Purdue University in Tippecanoe County.

IDEM will coordinate with the Legislative Services Agency to determine if there is an impact to the affected entities of greater than \$500,000.

## **Benefits of the Rule**

The amendment will move all of Ispat Inland's affected boilers from 326 IAC 10-3 into the trading program in 326 IAC 10-4. This change will require Ispat Inland to meet the same emission limit it would have met under 326 IAC 10-3. However, the change will improve the trading program by adding allowances to it that are equal to the required emission limit, thereby making more allowances available for trading. Also, Ispat Inland will add continuous emissions monitors to their boiler stacks as required by the trading program.

The amendments will require Purdue University to add three boilers to the trading program that were previously unregulated by the rule, with a corresponding reduction in the overall Indiana NOx budget.

The amendments will add anaerobic digestion systems to the definition of "energy efficiency projects" in 326 IAC 10-4-2 and three new formulas to the energy efficiency and renewable energy set aside portion of 326 IAC 10-4-9, thereby expanding eligible projects.

The amendments will harmonize the dates for all sources subject to the rule to one date, May 31, 2004, pursuant to a new rulemaking by U.S. EPA, thereby making it easier for sources to comply and IDEM to enforce the rule.

## **Description of the Rulemaking Project**

Rule amendments will:

- Address a situation where boilers owned by Ispat Inland are regulated under 326 IAC 10-3 and 326 IAC 10-4, by moving all their emission limits to 326 IAC 10-4, the budget trading rule.
- Reduce NOx emissions with the addition of Purdue's Boilers 1, 2, and 3 under 326 IAC 10-4-9. These boilers were originally included in EPA's non-EGU inventory as small boilers. EPA has determined these boilers exceed two hundred fifty (250) MMBtu/hr and therefore meet the definition of "large affected unit" and should be added to the rule.
- Add "anaerobic digester systems" to the definition "energy efficiency projects" in 326 IAC 10-4-2.
- Add three new energy efficiency or renewable energy formulas to 326 IAC 10-4-9. Too many projects are categorized under the same formula in the current rule. New formulas need to be added to the rule to separate these projects. The new formulas have been added to the rule for demand side projects and include 1) combined heat and power projects, and 2) projects involving combined cycle systems, fuel cells, and microturbines.
- Change the compliance date for sources subject to Section 126 of the Clean Air Act. A recent court decision agreed that the compliance dates for these NOx sources should be the same. IDEM is incorporating the new date into our rules to be consistent with the federal rules.

### **Scheduled Hearings**

First Public Hearing: Noticed for November 6, 2002 in Indianapolis, Indiana was opened and continued until December 4, 2002.

Second Public Hearing: May 7, 2003.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- 7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
  - (A) human, plant, animal, or aquatic life; or
  - (B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

The amended rules are consistent with federal laws.

### **Rulemaking Process**

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along

with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

### **IDEM Contact**

Additional information regarding this rulemaking action may be obtained from Suzanne Whitmer, Rules Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027, press 0, and ask for extension 2-8229 (in Indiana).

Technical information may be obtained from Roger Letterman, Compliance Branch, Office of Air Quality, (317)232-8342 or (800) 451-6027, press 0, and ask for extension 2-8342 (in Indiana).